

**ITEM 4**  
**EXECUTIVE DIRECTOR'S REPORT**  
**COORDINATING COUNCIL**  
**ANALYSIS AND RECOMMENDATION**  
**TO**  
**ISSUES IMPEDING THE PROGRESS OF ADOPTING THE NFPA 5000**

**I. SUBJECT**

Issues impeding the progress of adopting the National Fire Protection Association (NFPA) 5000 building code and resolutions or recommendation(s) if the issues are not resolvable.

**II. BACKGROUND**

On July 29, 2003 the California Building Standards Commission recommended the NFPA 5000 building code be used as the basis for California's next building code. In response to the recommendation, state agencies formed workgroups that determined the NFPA 5000 is incomplete and requires many amendments. Consultants provided by the NFPA assisted in developing coordinated amendments to the NFPA 5000. While not fully completed, the product of the consultants resulted in hundreds of pages of amendments. A majority of the amendments were identified as transcriptions from the current California Building Code which is based upon the Uniform Building Code or from other standard bodies. Thus legal counsels for the various state agencies advised their staff to cease any further development until the agencies receive reasonable assurance that required licenses will be provided. No assurances have yet been received.

Under direction of the Building Standards Commission to resolve all issues impeding the progress of adopting the NFPA 5000, on February 8, 2005 the Coordinating Council (Council) accepted testimony on the copyright issue/concerns, and identified the other issues impeding the progress. Furthermore, on February 22, 2005, the Council received input on the other issues. The issues are:

- Copyright issues
- Coordination issues with the International Residential Code or other adopted model codes
- Resource constraints of the state agencies, costs, and inability to timely develop and justify massive number of amendments and a usable code
- Resource constraints of the state agencies and costs to the State to process massive number of amendments
- Justifying cost impacts upon state agencies, local agencies, schools, businesses and housing required by the California's rulemaking law (Administrative Procedure Act), and if necessary, obtaining approvals from the California Department of Finance
- Justifying and assessing economic impact upon businesses, including the ability to compete with businesses in other states
- Enforcement issues

### A. Copyright Issue

Because the first draft of amendments prepared by the NFPA consultants contained transcribed text from codes copyrighted by other standards and code writing bodies, the departments reported that under advisement of counsel from each department, assurances of the required license was needed to continue the development effort and publicly hear the draft amendments. Furthermore, at least one of the code writing bodies stated that they would not grant a license of their works. Both the NFPA and ICC presented their views and positions on the copyright issue. NFPA maintained that the amendments prepared by their consultants are covered by "fair use" and can be disseminated for development purposes. On the other hand, ICC made clear that while they would work with the State in adopting a code based upon the IBC, they would not license provisions of their copyrighted code to fix a competitor code. There was no consensus in this matter nor is there a clear resolution.

### B. Coordination issues with the International Residential Code (IRC) or other model codes

The Department of Housing and Community Development reported that during the development phase, coordination issues were identified between the NFPA 5000 and IRC. Specifically, the Department reported issues related to the structural provision of the IRC, which relies upon structural provisions of the International Building Code (IBC). While some testimony suggested that the IRC can be used independently of any other codes, the International Code Council, the code writing body for the IRC, reported that IRC is a companion document to the IBC, and relies upon the standards in the IBC to be effective. The effort to resolve this matter will take an enormous effort in both time and cost to state agencies to correlate and continually maintain, and yet the product is still potentially problematic as the amendments will not be developed within the traditional consensus process of the model code writing bodies that utilize vastly greater number of experts.

Furthermore, the Office of the State Fire Marshal reported that if the recommendation calls for changing to the IBC, there are coordination and correlation issues with the NFPA 1 Uniform Fire Code, the companion fire code to the NFPA 5000 building code. The companion document to the IBC is the International Fire Code (IFC).

### C. Resource constraints of the state agencies, costs, and the inability of state agencies to timely develop and justify massive number of amendments and a usable code

All state agencies reported resource constraints for various reasons that will impact the timely development and adoption of the NFPA 5000 resulting from having to develop, justify, and maintain massive number of amendments required to make NFPA 5000 a usable building code. Notwithstanding that the massive number of amendments will have to be continually maintained, the massive number of amendments will require additional time and cost to state agencies to develop the regulations and to justify the regulations in accordance with California's rulemaking laws. Some agencies indicated that the development of the regulations and justifications can take more than two years following any solutions to the impediments. Resources are unavailable because:

- State agencies are not resourced to make massive number of amendments to model codes
- State agencies workloads have increased in other program areas, such as an increase in the number of construction projects requiring review

- Other statutory responsibilities (e.g. development of other regulations required by California law, such as Wildland and Urban Interface Regulations)
- Some state agencies are not resourced with the necessary expertise to develop, process, and continually maintain massive numbers or certain types of amendments that are already addressed by the current model building code adopted by the State. (e.g. both the Building Standards Commission and the Department of Housing are not staffed with structural engineers to develop and continually maintain massive structural amendments, and the Division of the State Architect is not adequately resourced with subject matter experts in other subject of the code, except for the structural provisions)

Furthermore, the massive number of amendments makes the codes much more complex and results in more misapplication and lack of uniformity of the codes.

#### D. Resource constraints of the state agencies of process massive number of amendments and costs

The Building Standards Commission is staffed and budgeted to administer the adoption, publication, and maintenance of a limited number of amendments to the codes. Furthermore, the proposing state agencies are also staff to develop, administer and maintain a limited number of amendments. For example, the structural amendments required to make the NFPA 5000 usable will require massive number of amendments. The estimated increase is from its approximate current of 0% - 10% to 90%. Thus the cost and resource requirement of processing and continually maintaining massive number of amendments will be significantly more demanding and negative upon the Building Standards Commission staff and state agencies without additional resource and funding augmentations.

#### E. Justifying cost impacts upon state agencies, local agencies, schools, businesses and housing, and economic assessment on businesses required by the California's rulemaking law (Administrative Procedure Act)

When proposing and adopting regulations, California law, known as the Administrative Procedure Act, requires state agencies to prepare a cost analysis and justify proposed regulations in terms of cost impact upon state agencies, local agencies, schools, businesses and housing. Furthermore, the Administrative Procedure Act requires the state agencies to identify alternatives to what is being proposed and give reasons for rejecting the alternatives. Notwithstanding, the state agencies must be able to defend that the proposed regulations would be more effective and less burdensome to affected persons than the alternative.

In addition to the Administrative Procedure Act, the "Nine Point Criteria" of Building Standards Law requires state agencies to justify to the satisfaction of the Commission that the proposed regulations are in the "*public interest*" and the "*cost to the public is reasonable, based upon the overall benefit to be derived.*"

The Coordinating Council received testimony making it problematic to justify the adoption of NFPA 5000 according to above identified requirements of the APA and Building Standards Law. Input in this matter was received from the League of Cities, local building officials, fire officials, architects, engineers, University of California, California Building Industry Association, California Hospital Association, California Council of the American Institute of Architects, Structural Engineers Association of California, code instructors, and building

product manufacturers. The speakers reported cost and economic impacts to local governments, state agencies, and businesses. The League of Cities estimated hundred of thousands of dollars.

The costs and economic impacts would be attributed to:

- Developing, justifying, adopting and implementing massive number of local amendments similar to those adopted by the State for applications and occupancies not regulated by the State
- Training and educating local buildings, fire officials, architects, engineers, businesses, private persons and others needing to comply with the NFPA 5000, including California statutory requirements of continuing training and certification of plans examiners and inspectors
- Participating in NFPA's code development process (e.g. fire prevention officers wrote in a report that the cost of participating in the NFPA process is at least 5-times more costly than their current participation budget)
- Obtain building product approvals from NFPA's evaluation services – all manufacturers of building products will have to pay fees to the NFPA 5000 evaluation services
- Purchasing and updating reference materials required of NFPA 5000
- Re-tooling some State licensing exams (e.g. engineers professional licensing exam)
- Not receiving potential insurance discounts because of poor ratings by the Insurance Services Office of building and fire departments that are enforcing out-of-date codes during the extensive time period taken to implement NFPA 5000

Furthermore, the California League of Cities' survey purported that 2.22% of the fire chiefs and 0% of the building officials supported the adoption of NFPA 5000 building code. The reasons for those not supporting the NFPA 5000 are those listed above, as well as, the lacks the infrastructure to support local governments with product approval evaluation services and interpretation services.

Notwithstanding the direct costs, some of those costs will eventually be past on to the consumers in the form of higher construction costs resulting from increase fees, cost of materials and cost from delays, or result in the inability of California businesses from competing and/or doing business in other states.

#### F. Enforcement issues

Local government bodies and instructors reported that a three to four year delayed implementation date of a California Building Code based upon the NFPA 5000 will be needed. Furthermore, testimony purported that there will be inconsistencies in requirements and interpretations between jurisdictions, which will result in delays and construction cost increases. A delayed implementation will be needed because:

- Instructors teaching the California Building Code which contains massive number of amendments will require at least a year to learn.
- Local governments will need at least two to three years to educate and train plan checkers and inspectors on the California Building Code which contains massive number of amendments and is based upon a model code that they are unfamiliar.

### III. RECOMMENDATION(S)

While there is no consensus or clear resolution to issues associated with copyright and licensing issues that are impeding the progress of adopting the NFPA 5000 building code, other impediment issues are clearer. Those issues clearly make it problematic to justify economic and cost impacts, as required by California's Rulemaking Laws (Administrative Procedure Act and Building Standards Law), upon state agencies, local government, businesses and housing. No mitigating solutions or resolutions to those issues were presented to the Coordinating Council. Thus adopting the NFPA 5000 building code is problematic.

Since there are no apparent or realistic solutions to the impediment issues, the Council made three motions at its March 8, 2005 Coordinating Council meeting:

Council Members present included: Stan Nishimura, Executive Director and Chair; Dave Walls representing the Department of Housing and Community Development; Kurt Schaefer representing the Office of Statewide Health Planning and Development; Glenn Takeoka representing the Department of Health Services; Howard Smith representing the Department of General Services; Ruben Grijalva representing the Office of the State Fire Marshal; Bill Pennington representing the California Energy Commission; and representative for the Occupational Safety and Health Standards Boards was not present.

1. Dave Walls motioned and Howard Smith seconded the motion to:

Recommend to the Commission that they rescind the July 29, 2003 decision regarding the recommendation to adopt the NFPA 5000, NFPA 1, and the structural provisions of the IRC; and that the Coordinating Council has found that evidence has been presented that issues impeding the development of NFPA 5000 cannot be resolved in a timely manner, if at all. And based upon these findings, the Council recommends to the Commission that they then recommend to the relevant state agencies to propose for adoption the International Building Code as the basis for the next California Building Code.

Motion Passed Unanimously

2. Ruben Grijalva motioned and Kurt Schaefer seconded the motion to:

Recommend based upon coordination issue and the need for a coordinate set of codes that the Commission recommend the proposed adoption of the International Fire Code.

Motion Passed Unanimously

3. Dave Walls motioned and Ruben Grijalva seconded the motion to:

Recommend based upon coordination issues and the need for a coordinate set of codes that the Commission recommend to the relevant state agencies to include the International Residential Code.

Motion Passed Unanimously